

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MARLENE JOHANSEN

Plaintiff and Counterclaim
Defendant

Civil Action No. 04-11789-RCL

v.

UNITED STATES OF AMERICA

Defendant and Counterclaim
Plaintiff

v.

TIMOTHY BURKE

Counterclaim Defendant

PLAINTIFF'S OPPOSITION TO THE UNITED STATES MOTION FOR SUMMARY
JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT

The Plaintiff, Marlene Johansen ("Ms. Johansen") moves this honorable Court pursuant to Rule 56 of the Federal Rules of Civil Procedure to enter judgment against the United States (the "Defendant" or the "United States") for the sole count of her Complaint and on Counts I and II of the United States' Counterclaim. As grounds therefore the Plaintiff states that there are no material facts in dispute. The facts of this matter establish that the Plaintiff is entitled to judgment as a matter of law.

In support of this motion, the Plaintiff refers to her Complaint, her Statement of Undisputed Facts and the attached

Memorandum of Law.

WHEREFORE, the Plaintiff requests that the Court:

1. Enter a judgment for her against the Defendant;
2. Schedule a hearing on this Motion;
3. Award reasonable attorney's fees and costs; and
4. Grant such further relief as deemed necessary by the Court.

Marlene Johansen
by her attorney

/s/ Timothy J. Burke
Timothy J. Burke
BBO# 543837
400 Washington Street
Braintree, MA 02184
(781) 380-0770

Dated: August 1, 2005

Plaintiff's Certificate of Compliance with Local Rule 7.1.

Plaintiff's counsel hereby certifies that his office telephoned counsel for the Defendant, Stephen Turanchik, on Thursday, July 28, 2005. No agreement can be reached on narrowing the issue before the Court.

Certificate of Service

I hereby certify that a true copy of the above document was served upon each attorney of record via first class mail, postage prepaid on August 1, 2005 to the following counsel of record:

Stephen Turanchik
Trial Attorney, Tax Division
Department of Justice
P.O. Box 55
Ben Franklin Station
Washington, D.C. 20044

/s/ Timothy J. Burke

Timothy J. Burke